

Attachment 1

SECTION 1: DESCRIPTION

This is a request under the Freedom of Information Act (FOIA), 5 U.S.C. §552, as amended. Under FOIA, Hanford Challenge requests any final or follow-up documents related to the U.S. Department of Energy, Richland, WA Compliance Action Final Order (CAFO) RCRA-10-2013-0113 including transmission letters, responses, and other communications related to this final order and the related Closure Plans submitted by the Department of Energy, its contractors, and/or the Washington State Department of Ecology from June 1, 2012 to the day of this request.

Electronic transmission of these records is sufficient.

Thank You.

SECTION 2: REQUEST A FEE WAIVER

I. Introduction:

I hereby request that all fees, if any, be waived because this information is in the public interest, and can lead to a greater understanding of the permitting and operations of the federal facilities at Hanford. Hanford Challenge is not requesting the information for any private or commercial purpose and is a non-profit, public interest organization designated as a tax exempt entity under IRS code 501(c)(3).

Our interest in the disclosure of these records is for public education, public participation and commenting on the permitting process, advocacy for public interest goals, and a more responsive and accountable government that promotes environmental protection and protection of human health and safety.

II. This Specific FOIA Request Meets the Fee Waiver Requirements of FOIA and 40 C.F.R. §2.107(l):

5 USC § 552(a)(4)(A)(iii) of FOIA “requires agencies to waive fees for requesters able to demonstrate that ‘disclosure of the information is in the public interest.’” Judicial Watch, Inc. v. Rossotti, 326 F.3d 1309, 1310 (D.C.C. 2003). In order to demonstrate that a FOIA Request is in the public interest, and therefore eligible for a fee waiver, the requester must show that disclosure of the information ‘is likely to contribute significantly to public understanding of the operations or activities of the government as is not primarily in the commercial interest of the requester.’” Id. at 1312 (citing 5 U.S.C. § 552(a)(4)(A)(iii)).

“Congress intended independent researchers, journalists, and public interest *watchdog groups* to have inexpensive access to government records in order to provide the type of public disclosure believed essential to our society . . . Congress ensured that when such requesters

demonstrated a minimal showing of their legitimate intention to use the requested information in a way that contributes to public understanding of the operations of government agencies, no fee attached to their request.” Inst. for Wildlife Prot. v. United States Fish & Wildlife Serv., (290 F. Supp. 2d 1226, 1232 (D. Or. 2003) (emphasis added). “Congress amended FOIA to ensure that it is ‘liberally construed in favor of waivers for noncommercial requesters.’” Judicial Watch, Inc., at 1312 (quoting McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 CONG. REC. 27,190 (1986) (Sen. Leahy)).

a. First Fee Waiver Requirement (Public Understanding)

Under 40 C.F.R. 2.107(l)(2), in order to determine whether the first fee waiver requirement is met (likely to contribute significantly to the public understanding of the operations or activities of the federal government) FOI Offices will consider the following four factors:

- (i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government." The subject of the requested records must concern identifiable operations or activities of the Federal government, with a connection that is direct and clear, not remote.
- (ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding when nothing new would be added to the public's understanding.
- (iii) The contribution to an understanding of the subject by the public is likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding." The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public will be considered. It will be presumed that a representative of the news media will satisfy this consideration.
- (iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities. The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent. FOI Offices will not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is "important" enough to be made public. (40 C.F.R. 2.107(l)(2)).

Factor 1: The requested records concern the operations and activities of the Federal government because:

1. The Compliance Action Final Order (CAFO) RCRA-10-2013-0113 is directly related to one of the core operations/activities of the federal government (U.S. EPA)—compliance & enforcement of environmental laws and regulations. Compliance and enforcement is how the EPA ensures that governments, businesses, and industry understand and follow U.S. environmental laws and regulations. Compliance helps organizations and individuals meet their obligations under environmental laws and regulations. Enforcement often involves legal action against an organization or industry when they do not comply with the laws or regulations.
2. The operation or activity of the federal government (EPA) is not limited to the CAFO itself, but instead includes all of the supporting documentation, communications, etc in relation to the CAFO.
 - o The CAFO involved at least the EPA, DOE, and WA State Dept. of Ecology. Compliance orders are but one enforcement tool utilized by EPA to obtain compliance with environmental laws/regulations. This specific request asks for documents, transmission letters, responses, and other communications related to Compliance Action Final Order (CAFO) RCRA-10-2013-0113. These documents, letters, responses, and other communications of government employees are an integral part in formulating, discussing, and finalizing the CAFO operation/activity.
 - o This request is likely to show the mental impressions, reasons, and policy decisions of the government officials involved in formulating, discussing, and finalizing the CAFO.
 - o This request is specifically targeted to uncover communications between the EPA, DOE, and WA Dept. of Ecology leading up to, and immediately after the CAFO.

Factor 2 and 4: The disclosure is likely to contribute to a public understanding of government operations or activities because:

1. Although the CAFO is in the public domain, the supporting documentation and communications are not.
2. These communications will likely provide necessary insight into the mental impressions, reasons, and policy decisions of those involved in formulating, discussing, and finalizing the CAFO. This is something that the CAFO itself does not accomplish. The supporting documentation and communications would likely fill this gap of understanding by the public in the CAFO operation/activity.
3. The supporting documents and communications requested will likely add insight into what the federal government (via employees/officials) considers at various stages of this particular CAFO process. It will likely assist in explaining what was and was not important in this particular government operation/activity (CAFO), which would likely enhance public understanding of this operation/activity.
4. The communications requested will likely aid in explaining the process of how the federal government (EPA) arrived at its position for this CAFO.
5. This additional requested information is likely to significantly contribute to this particular CAFO and the process because Hanford Challenge seeks considerably more than the CAFO itself. Hanford Challenge requests “any final or follow-up documents related to

the U.S. Department of Energy, Richland, WA Compliance Action Final Order (CAFO) RCRA-10-2013-0113 including transmission letters, responses, and other communications related to this final order and the related Closure Plans submitted by the Department of Energy, its contractors, and/or the Washington State Department of Ecology.”

6. Unlike other federal government agency actions (like rulemaking, investigations, etc), where there is a record for decision-making, there is no such record or documentation for this CAFO. The public understanding will be significantly enhanced by releasing the specific documents and communications requested by having access to and seeing more of the record and accompanying documents of how their government arrived at this decision.

Factor 3: The disclosure is likely to contribute to the public understanding of a reasonably broad audience of persons interested in the subject matter because:

1. Hanford Challenge expertise in subject area:
 - o The Hanford Challenge staff has many years of experience directly related to Hanford oversight and has unique expertise regarding the environmental, safety, and health issues associated with nuclear sites. Hanford Challenge, an independent non-profit and non-governmental agency, has been addressing cleanup and storage of nuclear and chemical waste at the Hanford Nuclear Site for 5+ years. Tom Carpenter, the Executive Director of Hanford Challenge, has been working on Hanford cleanup and waste storage issues for over 25 years.
 - o Hanford Challenge consistently obtains information about Hanford, the cleanup process, the storage of nuclear and chemical waste, etc, and consistently uses its capacity to read, dissect, and share the information in an easily understandable format for the public.
 - o Hanford Challenge has a seat on the Hanford Advisory Board, which advises the U.S. Department of Energy, The EPA, and the State of Washington on cleanup issues related to the Hanford Nuclear Site.
 - o Hanford Challenge is a founding and participating member of the Hanford Concerns Council, which resolves significant employee concerns at the Hanford Nuclear Site (mediation).
 - o Hanford Challenge has set up a program called Inheriting Hanford to teach younger people about Hanford cleanup issues and connect younger people with mentors.
 - o Hanford Challenge staff also accompany Hanford workers to Congress for congressional hearings and to testify before Congress.
 - o Hanford Challenge is consistently requested to comment or be interviewed for news articles, news shows, radio talk shows, and reports related to Hanford. This includes BBC, 60 Minutes, Newsweek, CBS This Evening, The Rachel Maddow Show, Washington Post, Seattle Times, King5 TV, Northwest Public Radio, The Tri-City Herald, etc. For a few examples, see:
 - <http://www.bbc.com/news/magazine-26658719>
 - <http://www.msnbc.com/rachel-maddow-show/watch/whistleblower-pays-price-for-voicing-nuke-safety-concerns-44137027537>

- <http://usnews.nbcnews.com/news/2013/06/22/19088481-feds-nuclear-waste-may-be-leaking-into-soil-from-hanford-site?lite>
 - <http://www.newsweek.com/americas-fukushima-243996>
 - o There is no other non-governmental organization in existence that has as much collective experience or expertise on Hanford cleanup issues as Hanford Challenge.
 - o Hanford Challenge also publishes reports on information it obtains, including from FOIA requests.
 - http://www.hanfordchallenge.org/cmsAdmin/uploads/2003_Knowing_Endangerment_002.pdf
 - o Hanford Challenge has collected, reviewed, and used information it obtained via FOIA requests, the Washington Public Records Act, and other sources to make official comments to, for example, the
 - 1) Plutonium and Cesium Cleanup on Hanford's Central Plateau (Attachment 2);
 - 2) Department of Energy's Notice of Intent to Prepare an Environmental Assessment for the Proposed Conveyance of Land at the Hanford Site, Richland, WA and Notice of Potential Floodplain and Wetland Involvement (Attachment 3);
 - 3) Draft Hanford Facility Dangerous Waste Permit (Attachment 4);
 - 4) Proposed Permit Modification of the Hanford Facility RCRA Permit, Dangerous Waste Portion, Revision 8C, for the Treatment, Storage, and Disposal of Dangerous Waste, Part III, Operating Unit 10, Waste Treatment and Immobilization Plant, WA 790008967 (Attachment 5);
 - 5) Draft Hanford Facility Dangerous Waste Permit (Attachment 6); and
 - 6) Proposed Plan and Remedial Investigation/Feasibility Study for the 300-FF-1, 300FF-2, and 300-FF-5 Operable Units (Attachment 7).
2. Ability and intention to effectively convey information to the public
- o Hanford Challenge has already shared information obtained in the past and will share the specifically requested information with the broad public and specific media outlets:
 - Hanford Challenge will share the information with King5 Television in Seattle, Washington. Hanford Challenge regularly works with King5 TV, National Public Radio, LA Times, Washington Post, Tri-City Herald, Associated Press, Weapons Complex Monitor, and CBS Nightly News. Recently, King5 has been particularly effective in conveying information to the public. King5 TV has been doing a series of stories called "Hanford's Dirty Secrets." King5 has won a Peabody for their work on this series.
 - Hanford's Dirty Secrets Link:
<http://www.king5.com/news/investigators/series/Hanford-Dirty-Secrets-series-radiation-nuclear-waste-205308821.html>
 - In addition to the above-stated specific news company that has a proven record of specific interest in Hanford stories and can convey the information effectively, Hanford Challenge will also send out the likely press release from this information and accompanying documents

generated from this specific request to our media list. Hanford Challenge maintains and updates a media contact list of over 600 individuals that we send our press releases and accompanying documents to if any one of them are interested in further information we obtain from FOIA requests.

- As stated above, Hanford Challenge is often requested to appear or be interviewed for specific Hanford stories and does so on a regular basis.
 - Hanford Challenge will likely share the requested information with the Hanford Advisory Board.
 - o Hanford Challenge will also likely disseminate the requested information via our website (www.hanfordchallenge.org; which is viewed by tens of thousands of visitors annually, includes documents, resources, and news on Hanford), quarterly newsletter, social media (Facebook (708 likes) and Twitter (434 followers)), report(s) (if appropriate), elected representatives, and public events.
 - o In the past year (June 24 2013-June 23 2014) Hanford Challenge had 21,162 sessions on our website, with 38,652 page views and 14,979 unique users. 70% of those users were first time users. On Facebook over the same time we had 58,184 instances of people accessing our content, be it in their news feed or on our page.
3. It is likely that a reasonably broad audience would be interested in the CAFO between the EPA and DOE because it involves illegally stored nuclear waste at the Hanford site.
 4. It is likely that a reasonably broad audience would be interested in the CAFO because the public does want to know if federal agencies have complied with federal environmental and procedural laws. In fact, our members, media contacts, and King5 TV have already expressed great interest in this information.

b. Second Fee Waiver Requirement (Commercial Interest)

Under 40 C.F.R. 2.107(l)(3), in order to determine whether the second fee waiver requirement is met (request is primarily in the commercial interest of the requester, FOIA offices will consider the following factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. FOI Offices will consider any commercial interest of the requester (with reference to the definition of "commercial use request" in paragraph (b)(1) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters will be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

(ii) The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. FOI Offices ordinarily will presume that when a news media requester has satisfied the public interest

standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

Factor 1: Hanford Challenge has no commercial interest that would be furthered by the requested documents.

1. Hanford Challenge, a non-profit public interest group, requests this information on behalf of our members and the public. Hanford challenge does not seek this information for a use or purpose that furthers the commercial trade or profit interest of Hanford Challenge.
2. Hanford Challenge will not profit from the requested information. Hanford Challenge will not receive monetary or other benefits from disclosing the requested information to the public.
3. One of the main purposes of this request is to turn the documents over to the public and the media for no charge so that they may know more about the CAFO.
4. Hanford Challenge has never received a profit from a FOIA request and will not with this FOIA request.

Factor 2: The public interest in disclosure outweighs any remote commercial interest that the EPA may assert that Hanford Challenge has in the requested information.

1. Hanford Challenge is not requesting the information for any private or commercial purpose and is a non-profit, public interest organization designated as a tax exempt entity under IRS code 501(c)(3). Our interest in the disclosure of these records is for public education, public participation and commenting on the permitting process, advocacy for public interest goals, and a more responsive and accountable government that promotes environmental protection and protection of human health and safety.